

E-FILED 03-08-2011

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BONIFACIO CARRERA,

No. C09-02672 HRL

Plaintiff,

**ORDER (1) DENYING DEFENDANT'S
MOTION TO STRIKE;
(2) SANCTIONING PLAINTIFF'S
COUNSEL; AND (3) RE-SETTING
DEADLINES**

v.

THYSSEN KRUPP SAFEWAY, INC. and
DOES 1 to 100, inclusive,

[Re: Docket No. 35]

Defendant.

Defendant moves to strike plaintiff's expert designations. There is no dispute that the expert designations were late and failed to comply with Fed. R. Civ. P. 26(a)(2). Plaintiff's counsel offered no satisfactory justification for these failings. And, as discussed at the motion hearing, this court is underwhelmed, to put it mildly, by plaintiff's efforts to comply with court orders and the applicable federal rules. Nevertheless, the court also finds that, where possible, cases should be decided on their merits. And, it concludes that on balance, and having weighed competing legitimate interests and possible prejudice, the motion should be denied.

The trial set to begin on March 21, 2011 is vacated.

No later than March 21, 2011, plaintiff shall deliver to defendant an expert designation that provides all information required to be disclosed by Fed. R. Civ. P. 26(a)(2).

The parties shall have until **April 11, 2011** to designate rebuttal experts with reports.

Expert discovery closes on **May 27, 2011**.

The last date to hear motions re experts or expert disclosures (including any motions under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)) is **July 26, 2011, 10:00 a.m.**

The pretrial conference is continued to **September 27, 2011, 1:30 p.m.** The parties shall comply with the undersigned's Standing Order re Pretrial Preparation with respect to the timing and content of the Joint Pretrial Statement and other submissions. The parties shall also be prepared to discuss the setting of a new trial date.

Plaintiff's counsel is sanctioned \$750.00, payable to the Clerk of the Court, for his noncompliance with Fed. R. Civ. P. 26 and this court's order. Payment shall be made forthwith.

Plaintiff's counsel shall also pay defendant's reasonable attorneys' fees and costs necessitated by plaintiff's counsel's failure to serve timely and proper expert disclosures--- including any fees incurred in bringing the instant motion.¹ No later than **March 28, 2011**, defendant shall submit declaration(s) from appropriate person(s) and any supporting documentation for its claimed fees and costs. Plaintiff shall file responsive papers by **April 11, 2011**. Defendant's reply, if any, shall be filed by **April 18, 2011**. Unless otherwise ordered, the matter will be deemed submitted on the papers without oral argument.

SO ORDERED.

Dated: March 8, 2011



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

¹ As discussed at the motion hearing, however, fees and costs incurred in general trial preparation will not be reimbursed.

5:09-cv-02672-HRL Notice has been electronically mailed to:

Frank Edward Schimaneck feschimaneck@drydenlaw.com, llbenson@drydenlaw.com,
lpnewman@drydenlaw.com, sefoe@drydenlaw.com

Gerald Herbert Scher geraldsher@sbcglobal.net, chaparita30@sbcglobal.net,
marysanchez1970@yahoo.com

Roger Arne Agen raagen@drydenlaw.com

Susan E. Foe sefoe@drydenlaw.com, llbenson@drydenlaw.com, rbalinton@drydenlaw.com

William John Armstrong barmstrong@acs-lawfirm.com

Counsel are responsible for distributing copies of this document to co-counsel who have not
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